

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JULIO JULIETA,

Petitioner,

v.

S. FRAUENHEIM, Warden,

Respondent.

Case No.: 16cv987-BTM-BGS

**REPORT AND
RECOMMENDATION REGARDING
RESPONDENT'S MOTION TO
DISMISS**

I. INTRODUCTION

Petitioner Julio Julieta¹ (“Petitioner”), a state prisoner, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (“Petition”), challenging his conviction for aggravated kidnapping for purposes of extortion, Cal. Penal Code § 209(a), assault with a firearm, Cal. Penal Code § 245(a)(2), torture, Cal. Penal Code § 206, two counts of forcible rape, Cal. Penal Code § 261(a)(2), and forcible sodomy, Cal. Penal Code § 286(c)(2). (ECF No. 1.)

Presently before the Court is Respondent’s Motion to Dismiss. (ECF No. 9-1.) Respondent contends the Petition should be dismissed because the first three claims are moot, and the last three claims fail to raise constitutional issues. (*Id.*) Petitioner filed a

¹ Plaintiff previously went by the name of Ulyses Beltran.

1 response on October 4, 2016. (ECF No. 11.) The Motions were taken under submission
 2 without oral argument pursuant to So. Dist. CA Local Civ. Rule 7.1(d)(1) and are now
 3 ready for disposition. For the following reasons, the Court **RECOMMENDS** that
 4 Respondent's Motion to Dismiss be **GRANTED** in part and **DENIED** in part.

5 **II. STATE AND FEDERAL PROCEEDINGS**

6 A San Diego jury convicted Petitioner of aggravated kidnapping for purposes of
 7 extortion, Cal. Penal Code § 209(a)), assault with a firearm, Cal. Penal Code § 245(a)(2),
 8 torture, Cal. Penal Code § 206, two counts of forcible rape, Cal. Penal Code § 261(a)(2),
 9 and forcible sodomy, Cal. Penal Code § 286(c)(2). The jurors further found that
 10 Petitioner had personally used a firearm during all of the offenses other than the torture
 11 and assault, Cal. Penal Code § 12022.53(b), that he had inflicted great bodily injury upon
 12 the victim during the sex crimes, Cal. Penal Code § 12022.8, and that he had committed
 13 the sex crimes in various manners that triggered the One Strike sentencing provisions of
 14 Cal. Penal Code § 667.61. The jury acquitted Petitioner of kidnapping the victim for
 15 purposes of rape, and acquitted him of additional counts of rape and sodomy. (*See* ECF
 16 No. 9, Ex. B at 429-43; Ex. C at 721-37); *see also* *People v. Beltran*, 2015 WL 138749 at
 17 *2 (Cal. Ct. App. Jan. 12, 2015), *review denied* (Apr. 22, 2015).

18 Petitioner was sentenced to forty years, determinate, in state prison to be followed
 19 by a term of fifty years to life, indeterminate. (ECF No. 9, Ex. C at 661-64, 743-45.)
 20 Petitioner appealed, raising six arguments. The first three arguments concerned the
 21 kidnapping-for-extortion conviction. The California Court of Appeal reversed the
 22 kidnapping conviction, holding that there was insufficient evidence that Petitioner had
 23 tried to extort property, as opposed to information, from the victim. The California Court
 24 of Appeal declined to address the remaining two arguments regarding jury instructions
 25 for the kidnapping charge.

26 As to the remaining arguments, the California Court of Appeal denied relief on a
 27 state-law sentencing question by holding that there was a sufficient delay between some
 28 of the sex crimes to permit two separate one-strike sentences. *People v. Beltran*, 2015

1 WL 138749 at *5 (applying, e.g., *People v. Jones*, 25 Cal. 4th 98, 101, 107 (2001)). The
 2 court held there were no other errors, and it reviewed sealed immigration records
 3 regarding the victim before concluding that the trial court had acted within its discretion
 4 in not disclosing them to the defense. *People v. Beltran*, 2015 WL 138749 at *6 n.7
 5 (distinguishing *Brady v. Maryland*, 373 U.S. 83, 87-88 (1963)).

6 Petitioner filed a petition for review that raised all six claims, but the California
 7 Supreme Court denied review in April 2015. (ECF No. 9, Exs. J and K.) In June 2015,
 8 Petitioner was resentenced to a term of thirty years, determinate, plus fifty years to life.
 9 (ECF No. 9, Exs. L and M.)

10 **III. RELEVANT LAW**

11 Rule 4 of the Rules Governing Section 2254 Cases in the United States District
 12 Courts expressly permits a district court to dismiss a habeas petition “[i]f it plainly
 13 appears from the petition and any attached exhibits that the petitioner is not entitled to
 14 relief in the district court.” *See also Gutierrez v. Griggs*, 695 F.2d 1195, 1198 (9th Cir.
 15 1983) (“Rule 4 explicitly allows a district court to dismiss summarily the petition on the
 16 merits when no claim for relief is stated”).

17 **IV. DISCUSSION OF PETITIONER’S CLAIMS**

18 **A. Grounds One Through Three**

19 The first three grounds that Petitioner raises concern his conviction for kidnapping
 20 for extortion. Ground one claims that the evidence was insufficient to support the
 21 conviction for kidnapping for ransom, reward, or extortion as charged in count one.
 22 (ECF No. 1 at 6.) With respect to his claim, Petitioner argues that “no reasonable trier of
 23 fact could find that kidnapping someone for information is legally sufficient to prove that
 24 appellant kidnapped Guadalupe for ‘ransom,’ reward or to commit extortion or to exact
 25 from another person any money or valuable thing.” (*Id.* at 7.) Petitioner argues that this
 26 conviction is a violation of his Fourteenth Amendment right to due process. (*Id.* at 8.)

27 In ground two, Petitioner claims that the trial court violated his Sixth and
 28 Fourteenth Amendment rights when it failed to instruct the jury on the lesser included

1 offense of felony false imprisonment, where the jury could have found the lesser but not
 2 the greater offense was committed. (*Id.* at 14-20.) In ground three, Petitioner claims that
 3 his Sixth and Fourteenth Amendment rights were violated when the trial court instructed
 4 the jury that he could be guilty of kidnapping if he did so to get money or something
 5 valuable, when the statute plainly requires that money or a valuable thing be exacted
 6 from another person. (*Id.* at 22.)

7 Respondent argues that these three grounds concern a conviction that was reversed
 8 by the California Court of Appeal due to insufficient evidence. (ECF No. 9-1 citing
 9 *People v. Beltran*, 2015 WL 138749, at *3-4.) Respondent also notes that Petitioner was
 10 re-sentenced in June of 2015, wherein his sentence was reduced by the ten years he had
 11 previously been given for the kidnapping charge. (*Id.*) As a result, Respondent argues
 12 that these three grounds are moot. (*Id.*) According to Petitioner, the fact that he received
 13 a lesser sentence of ten years, and not forty years, indicates that the California Court of
 14 Appeal did afford him relief on these grounds. (ECF No. 11 at 3.)

15 The Court agrees that Petitioner's claims regarding his kidnapping charge are
 16 moot, as they were reversed by the California Court of Appeals in 2015. *People v.*
 17 *Beltran*, 2015 WL 138749, at *3-4. Petitioner also received a reduced sentence as a
 18 result of the reversal of this charge. (ECF No. 9-14, Ex. M at 3-4.) Petitioner's argument
 19 that he should have received a lesser sentence is without merit. The Superior Court
 20 during the resentencing stated the following with respect to Petitioner's sentence:

21
 22 So a Judgment of Acquittal having been – a Judgment of Acquittal is entered
 23 now as to count one and the sentence is vacated as to count one. And the
 24 sentence as to the allegation attendant to count one, the allegation pursuant
 25 to Penal Code Section 12022.5(b), is also vacated. The remaining counts,
 26 judgment was affirmed by the Appellate Court. And so for the purposes of
 27 sentencing, the Court having entered a Judgment of Acquittal as to count one
 28 and vacated count one and the allegation attendant to count, once again
 probation is denied. The defendant is remanded to the custody of the
 Department of Corrections as to Count five for a total of 25 years to life and
 to count six for a term of 25 years to life, with counts – with both counts to

1 run consecutive to one another. Additionally, the defendant is, once again,
 2 sentenced to a additional consecutive term of 20 years as to counts five and
 3 six pursuant to penal code section 12022.53(b), ten years as to each count.
 4 And an additional consecutive term of ten years as to counts five and six
 5 pursuant to Penal Code Section 12022.8, five years as to each count. For a
 6 total of fifty years to life, plus thirty years. Once again, the 30 years shall be
 7 served first.

8 (ECF No. 9-14, Ex. M at 3-4.) Petitioner provides no support for his argument that
 9 his sentence should have been reduced by forty years upon the acquittal of the
 10 kidnapping charge. Indeed, Petitioner remained convicted of 1) assault with a
 11 firearm, 2) torture, 3) two counts of forcible rape, and 4) forcible sodomy.
 12 Petitioner received twenty-five years for each count of forcible rape (*Id.* at 3), and
 13 thirty years for the enhancements. (*Id.* at 3-4.)

14 Because Petitioner was acquitted of the kidnapping charge, there is no conviction
 15 for the Court to review. As a result, it plainly appears from the Petition that he is not
 16 entitled to relief. *Gutierrez*, 695 F.2d at 1198. The Court, therefore, **RECOMMENDS**
 17 that Respondent's Motion to Dismiss and to counts one, two and three be **GRANTED**.

18 **B. Ground Four**

19 In ground four, Petitioner argues that his multiple one-strike life sentence violated
 20 former penal code section 667.61² and his due process rights. (ECF No. 11 at 27.)
 21 Petitioner argues that Counts 5, 6 and 7 were committed in close temporal and spatial
 22 proximity where the victim remained under his "continuous and uninterrupted control."
 23 (*Id.* at 27.) As a result, Petitioner argues that the trial court improperly imposed separate
 24

25 ² The former version of California Penal Code § 667.61(g) stated in relevant part: "The term specified in
 26 subdivision (a) [i.e., 25 years to life] . . . shall be imposed on the defendant once for any offense or
 27 offenses committed against a single victim *during a single occasion* . . . Terms for other offenses
 28 committed during a single occasion shall be imposed as authorized under any other law, including
 Section 667.6, if applicable." (Emphasis added). Under this version of § 667.61(g), "sex offenses
 occurred on a 'single occasion' if they were committed in close temporal and spatial proximity." *People*
v. Jones, 25 Cal.4th 98, 107, 104 Cal.Rptr.2d 753, 18 P.3d 674 (2001).

1 one strike twenty-five years to life sentences under section 667.61(a). (*Id.* at 30.)

2 As a basic proposition, only claims which allege a violation of the federal
3 constitution, laws or treaties are cognizable on federal habeas review. *See* 28 U.S.C. §
4 2254(a) (West 2006); *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991). Habeas relief is not
5 available for an alleged error in the interpretation or application of state law, unless it
6 involves “fundamental unfairness.” *Id.* Because there is a possibility that Petitioner’s
7 sentence *could* amount to “fundamental unfairness,” it cannot plainly appear from the
8 Petition that he is not entitled to relief. *Gutierrez*, 695 F.2d at 1198. As a result, the
9 Court **RECOMMENDS** that Respondent’s Motion to Dismiss regarding Petitioner’s
10 fourth ground for relief be **DENIED**.

11 **C. Ground Six**

12 In Ground Six, Petitioner requests a “Pitches-type review” of immigration
13 documents regarding the victim in his criminal case. (ECF No. 1 at 35.) Petitioner
14 explains that he seeks an *in camera* review of any documents placed under seal by the
15 trial court. (*Id.* at 36.) Respondent argues that Petitioner has no constitutional right to
16 receive discovery, let alone post-conviction discovery. (ECF No. 9-1 at 6.) Moreover,
17 according to Respondent, even if this request was granted, it would not lead to a release
18 from custody. (*Id.*)

19 The California Court of Appeal analyzed this claim, and stated the following:

20
21 Before trial, defense counsel sought information as to whether Guadalupe
22 had obtained from the district attorney any promises of immigration relief in
23 the form of either a “U-visa” that would allow her to remain in the United
24 States as a crime victim, or some other favorable consideration. The district
25 attorney’s office was then in the process of obtaining Guadalupe’s
26 immigration file to determine if it contained discoverable Brady-type
27 material. The trial court eventually obtained the documents and informed
28 counsel it would conduct an *in camera* review, and it later ordered them
placed under seal at the conclusion of the case.

Asserting this court has a “constitutional responsibility to review trial
court decisions where important rights are concerned,” defendant asks that

1 we independently review the sealed records to determine if any of the
 2 documents or other materials were discoverable, and whether the court
 3 properly withheld disclosure of any documents or information. We have
 4 done so, and conclude the trial court neither abused its discretion in finding
 5 none of the materials was discoverable and that disclosure of the information
 6 was not appropriate, nor did the court violate any “important” right. (*See*,
 e.g., *People v. Myles* (2012) 53 Cal.4th 1181, 1209 [applying abuse of
 discretion standard].)

7 While the Court agrees that a request for *in camera* review of state court discovery
 8 proceedings is not cognizable on federal habeas review, *Randolph v. Adams*, 2006 WL
 9 2032542 (N.D. Cal. 2006), the Court disagrees that this claim does not present a federal
 10 issue. Courts are required to liberally construe habeas petitions to effectuate the apparent
 11 intent. *Hernandez v. Holland*, 750 F.3d 843, 858 (9th Cir. 2014) (citing *Allen v.*
 12 *Calderon*, 408 F.3d 1150, 1153 (9th Cir. 2005.)) Here, although Petitioner’s claim
 13 requests an *in camera* review of documents, it is clear from the narrative portion of the
 14 Petition that he is claiming a violation of his due process rights by the trial court and the
 15 California Court of Appeals when they reviewed the immigration documents. (ECF No.
 16 1 at 36-38.)

17 The Due Process Clause guarantees criminal defendants a fair trial and a right to
 18 present a defense. *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942
 19 (1955) (“A fair trial in a fair tribunal is a basic requirement of due process.”); *California*
 20 *v. Trombetta*, 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984) (the standard of
 21 fairness couched in the Due Process Clause “require[s] that criminal defendants be
 22 afforded a meaningful opportunity to present a complete defense”). To the extent the
 23 failure of the trial court to disclose these documents impacted Petitioner’s right to a fair
 24 trial, or to present a defense, Petitioner has stated a cognizable claim for federal habeas
 25 review. As such, this Court **RECOMMENDS** that Respondent’s Motion to Dismiss as
 26 to Petitioner’s Sixth ground be **DENIED**.

27 **D. Ground Five**

28 In Ground Five, Petitioner argues that even if there is no single error that warrants

1 relief, multiple errors “are to be viewed cumulatively,” and they require “reversal.” (ECF
2 No. 1 at 33.) Respondent argues that Petitioner has not sufficiently alleged that his
3 federal constitutional rights were violated by an accumulation of errors. (ECF No. 9-1 at
4 8.)

5 The Supreme Court has clearly established that the combined effect of multiple
6 trial court errors violates due process where it renders the resulting criminal trial
7 fundamentally unfair. *Chambers v. Mississippi*, 410 U.S. 284, 302-03, 93 S. Ct. 1038,
8 1047, 35 L. Ed. 2d 297 (1973) (combined effect of individual errors “denied [Chambers]
9 a trial in accord with traditional and fundamental standards of due process” and “deprived
10 Chambers of a fair trial”). The cumulative effect of multiple errors can violate due
11 process even where no single error rises to the level of a constitutional violation or would
12 independently warrant reversal. *Id.* at 290 n. 3. The Court has recommended that two
13 claims survive Respondent’s Motion to Dismiss. As a result, it does not plainly appear
14 that Petitioner is not entitled to relief based on a theory of cumulative error. *Gutierrez*,
15 695 F.2d at 1198. The Court **RECOMMENDS** that Respondent’s Motion to Dismiss as
16 to this claim be **DENIED**.

17 **V. CONCLUSION**

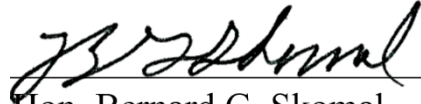
18 This report and recommendation of the undersigned Magistrate Judge is submitted
19 to the United States District Judge assigned to this case, pursuant to the provision of 28
20 U.S.C. section 636(b)(1). For the reasons set forth above, it is **RECOMMENDED** that
21 Respondent’s Motion to Dismiss is **GRANTED in part** and **DENIED in part**. It is
22 **RECOMMENDED** that Petitioner’s grounds one through three are **DISMISSED**.

23 IT IS ORDERED that no later than **February 17, 2017**, any party to this action
24 may file written objections with the Court and serve a copy on all parties. The document
25 should be captioned “Objections to Report and Recommendation.”

26 IT IS FURTHER ORDERED that any reply to the objections shall be filed with the
27 Court and served on all parties no later than **March 3, 2017**. The parties are advised that
28 failure to file objections within the specified time may waive the right to raise those

1 objections on appeal of the Court's order. *See Turner v. Duncan*, 158 F.3d 449, 455 (9th
2 Cir. 1998).

3
4 Dated: February 3, 2017


5 Hon. Bernard G. Skomal
6 United States Magistrate Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28